SUPREME COURT, U. S.

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IN THE

# Supreme Court of the United States

October Term, 1970
No. 511

ALFRED M. LEWIS, INC.,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,

*Respondent.*

**Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.**

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## SUBJECT INDEX


| | Page |
|---|---|
| Opinion Below | 1 |
| Jurisdiction | 1 |
| Questions Presented | 2 |
| Statutory Provisions Involved | 2 |
| Statement of the Case | 3 |
| Reasons for Granting the Writ | 5 |
| Conclusion | 7 |
| Appendix A. Opinion of the United States Court of Appeals for the Ninth Circuit ..... App. p. | 1 |

## TABLE OF AUTHORITIES CITED


| Cases | Page |
|---|---|
| Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967) | 2, 6, 7 |
| Johnson v. State of New Jersey, 384 U.S. 719, 86 S.Ct. 1772 (1966) | 7 |
| Linkletter v. Walker, 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965) | 7 |
| Roberts v. Russell, 392 U.S. 293, 88 S.Ct. 1921, 20 L.Ed.2d 1100 (1968) | 7 |
| See v. City of Seattle, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943 (1967) | 2, 6, 7 |
| United States v. Blalock, 255 F.Supp. 268 (U.S.D.C. E.D Pa. 1966) | 6 |
| United States v. Hammond Milling Co., 413 F.2d 608 (1969), cert. denied, 397 U.S. 1002 (1970) | 6 |
| United States v. J. B. Kramer Grocery Co., Inc., 418 F.2d 987 (8th Cir. 1969) affirming 294 F.Supp. 65 (U.S.D.C. E.D. Ark. 1969) | 6 |
| United States v. Stanack Sales Co., 387 F.2d 849 (3rd Cir. 1968) | 6, 7 |

| Statutes | |
|---|---|
| United States Code, Title 18, Sec. 3731 | 4 |
| United States Code, Title 21, Sec. 331(f) | 5 |
| United States Code, Title 21, Sec. 331(k) | 2 |
| United States Code, Title 21, Sec. 333(a) | 2, 5 |
| United States Code, Title 28, Sec. 1254(1) | 1 |

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ALFRED M. LEWIS, INC.,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,

*Respondent.*

**Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.**

The petitioner Alfred M. Lewis, Inc. respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on July 10, 1970.

## Opinion Below.

The opinion of the Court of Appeals, not yet reported, appears annexed hereto. No opinion was rendered by the District Court for the District of Nevada.

## Jurisdiction.

The judgment of the Court of Appeals for the Ninth Circuit was entered on July 10, 1970. This petition for certiorari was filed within thirty days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254 (1).

## Questions Presented.

1. May business premises be lawfully inspected for violations of the Federal Food, Drug and Cosmetic Act, when the inspection is made without a warrant, under color of badge, and without an informed consent.

2. May the doctrines of *See* and *Camara* be retroactively applied to a warrantless administrative search prior to the date of their decision.

## Statutory Provisions Involved.

United States Code, Title 21:

§331. The following acts and the causing thereof are prohibited:

"(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being adulterated or misbranded."

§333. Penalties:

"(a) Any person who violates any of the provisions of section 331 of this title shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than one year, or a fine of not more than $1,000, or both such imprionment and fine; . . ."

United States Code, Title 28:

§1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

> "(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; . . . ."

## Statement of the Case.

The petitioner Alfred M. Lewis, Inc., a California corporation, is a wholesale grocery company with its principal office at Riverside, California. It distributes food items to some 3,000 retail stores in the states of California, Arizona, Nevada, New Mexico and Texas. The company maintains centrally located warehouses for the distribution of food products to the retail stores. One warehouse was located in Las Vegas, Nevada. On September 13, 1966, Federal Food and Drug Administration Inspector Newton Chin inspected the petitioner's Las Vegas warehouse for adulterated foods. Upon arrival at the warehouse Inspector Chin presented his credentials to warehouse manager Rixie Riddle and stated he wanted to make an inspection of the warehouse. He also presented Riddle with a notice of inspection.

At that time it was Riddle's understanding that, under peril of law, inspectors had an absolute right to inspect warehouses and that it was company policy to allow inspectors free access to all warehouses. That criminal sanctions could be imposed if an inspector was denied access to a warehouse. This is shown by page 16 of Riddle's deposition:

> "Q. Now, do you know, at the time that Inspector Chin made his inspection on the 13th, what could have happened had he been denied access to the warehouse?
>
> A. Definitely.